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DEPUTY

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual,

Plaintiffs,

v.

WORLD WIDE CREDIT CORPORATION, a corporation; FIRST FEDERAL BANK OF CALIFORNIA, a National Bank; SAM SMARGON, an individual; RON FEINBERG, an individual; and DOES 1 through 20, inclusive,

Defendants.

CASE NO. '08 CV 1183 J RBB

NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(b) (FEDERAL QUESTION)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

ORIGINAL

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PLEASE TAKE NOTICE that, pursuant to 28 United States Code sections 1331, 1441, and 1446, Defendant First Federal Bank of California ("First Federal" or "Defendant") hereby gives notice of the removal of this action from the Superior Court of the State of California for the County of San Diego to the United States District Court for the Southern District of California. In support of the Notice of Removal, Defendant avers as follows:

1. On or about May 28, 2008, Plaintiffs Daniel Montano and Annie Montano ("Plaintiffs") filed a Complaint entitled Daniel Montano and Annie Montano v. World Wide Credit Corp., First Federal Bank of California, Sam Smargon, Ron Feinberg and Does 1 through 20 in the Superior Court of the State of California for the County of San Diego, Central Division, Case No. 37-2008-00084613-CU-FR-CTL. The Summons and Complaint were served on First Federal via substituted service. The requisite mailing of the Complaint was on June 6, 2008. Per Code of Civil Procedure sections 415.20(a), (b), and 415.95(a), service was effective on June 16, 2008. On or about June 13, 2008, Plaintiffs filed a First Amended Complaint as a matter of right. First Federal was served with the First Amended Complaint on June 24, 2008. True and correct copies of the Summons, the original Complaint, and the First Amended Complaint are attached hereto as Exhibits "A" through "C," respectively.

2. The Complaint alleges that Plaintiffs are residents of San Diego, California, who entered into a entered into a credit or lending relationship with First Federal in 2005. Complaint, ¶¶ 19, 20.

3. First Federal is a federal savings bank which is organized and existing under federal law. More specifically, First Federal is a federally chartered savings bank organized and operating under, among other statutes, the Home Owners' Loan Act of 1933, as amended, 12 United States Code section 1461, et seq. ("HOLA"), and the regulations issued thereunder by the Office of Thrift Supervision, including but not limited to 12 Code of Federal Regulations parts 545, 560, and 591.

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4. First Federal is the only defendant to the removable claims. For this reason, no other party defendant has been joined in this Notice of Removal.

5. This action is brought by Plaintiffs against defendants World Wide Credit Corporation, First Federal, Sam Smargon, and Ron Feinberg, on a residential loan secured by the property commonly known as 858 Banock Street, Spring Valley, California (the "Property"). The causes of action of the First Amended Complaint are for Violation of the Rosenthal Act and Fair Debt Collection Practices Act, Breach of Fiduciary Duty and Conspiracy to Breach Fiduciary Duties, Fraud and Conspiracy to Defraud, Constructive Fraud, Breach of Covenant of Good Faith and Fair Dealing, Violation of the California Business and Professions Code section 17200, and Negligent Supervision. With the exception of the Negligent Supervision cause of action, all of these causes of action are founded at least in part upon Plaintiffs' contention that First Federal improperly administered and/or serviced this loan in various unspecified ways, and engaged in conduct which harassed, oppressed and abused the Plaintiffs.

6. This Court has original jurisdiction of this civil action pursuant to 28 United States Code sections 1331 and 1441(b), because the Complaint asserts claims "arising under" the statutes and common law of the United States.

7. Pursuant to United States Supreme Court precedent, cases can "arise under" federal law and be removable "where the vindication of a right under state law necessarily turn(s) on some construction of federal law." Merrell Dow Pharmaceuticals, Inc. v. Thompson (1986) 478 U.S. 804, 808; Franchise Tax Board v. Laborers Vacation Trust (1983) 463 U.S. 1, 8-9. "Where federal substantive law is found to be controlling either by reason of the exclusive jurisdiction of the federal courts, or federal preemption, the suit is properly removable." Rettig v. Arlington Heights Fed. Sav. & Loan Ass'n (N.D.Ill. 1975) 405 F. Supp. 819, 823.

Pursuant to the Supremacy Clause of the Federal Constitution (U.S. Const., Art. VI, sec.2), Plaintiffs' statutory and common law claims based upon the loan servicing practices of First Federal are completely preempted by HOLA and the regulations issued thereunder

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by the Office of Thrift Supervision (the "OTS"). 12 USC § 1461, et seq., 12 CFR § 560.2. "[T]he federal regulations do occupy the entire field of regulation of the operation of federal savings banks." Federal Savings and Loan Insurance Corp. v. Kidwell ("FSLIC"), (N.D.Cal. 1989) 716 F. Supp. 1315, 1317; internal citation omitted. Under HOLA, the OTS "has been given 'plenary authority' to prescribe rules and regulations for the creation and governance of federal savings and loan associations" such as First Federal. (Eureka Federal Savings and Loan Ass'n v. Kidwell (N.D.Cal. 1987) 672 F. Supp. 436, 439.) "[F]ederal common law governs the internal operation of federal savings and loan associations." (Ibid.) Only the OTS "may regulate or supervise the internal affairs of the defendant associations precluding any state interference." (Id. at 440; internal citation omitted.)

Unlike national banks, federal savings associations are "completely federal in nature," and "Congress made plenary, preemptive delegation to the Board to organize, incorporate, supervise and regulate, leaving no field for state supervision." (Elwert v. Pacific First Federal Sav. & Loan Ass'n of Tacoma, Washington (D.Or. 1956) 138 F. Supp. 395, 400.) In light of the "complete federalization" of federal savings associations, they are "immune from any type of control or regulation by state authority." (Ibid.) "[F]ederal law preempts the field . . . , so that any California law in the area is inapplicable to federal savings and loan associations operating within California." Meyers v. Beverly Hills Federal Savings & Loan Ass'n (9th Cir. 1974) 499 F.2d 1145, 1147. Further, state causes of action regarding the lending practices of federal savings associations "constitute de facto regulation because they can directly affect the conduct of bank operations." FSLIC, supra, 716 F. Supp. at 1317.

Plaintiffs' claims are "a subject of which [the OTS] under appellate supervision of the federal courts, has exclusive and sole jurisdiction. Our state courts have no power to interfere in the internal affairs of a federal savings and loan association. Such associations owe their existence to and are fully controlled by an agency of the executive branch of the United States . . ." People v. Metrim Corp. (1960) 187 Cal.App.2d 289, 292-293. "[S]ince

the passage of the HOLA in 1933, OTS regulations have governed the 'powers and operations of every federal savings and loan association from its cradle to its corporate grave'."Bank of America v. City & County of San Francisco (9th Cir. 2002) 309 F.3d 551, 558 quoting Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta (1982) 458 U.S. 141, 145. Further, "regulation of federal savings associations by the OTS has been so 'pervasive as to leave no room for state regulatory control'." Id., quoting Conference of Fed. Sav. & Loan Ass'ns v. Stein (9th Cir. 1979) 604 F.2d 1256, 1260 , aff'd, (1980) 445 U.S. 921.

The Office of Thrift Supervision ("OTS") has "plenary and exclusive authority . . . to regulate all aspects of the operations of Federal savings associations . . . This exercise of the Office's authority is preemptive of any state law purporting to address the subject of the operations of a Federal savings association." 12 CFR § 545.2. Moreover, the OTS "occupies the entire field of lending regulation for federal savings associations." 12 CFR § 560.2(a); see also 12 USC § 1701j-3; 12 CFR § 560.2(b); 12 CFR § 591.1-591.3. Significantly, "State law" includes not only state statutes and regulations but also any ruling, order, or judicial decision. 12 CFR § 560.2(a).

State court actions against federal savings institutions are therefore completely preempted and properly removed to federal district court. See Meyers, 499 F.2d at 1146. Where, as here, the OTS' "rules and regulations augmented by federal common law ha[ve] preempted the field, [and] that, as a result, plaintiffs' cause of action does involve questions of controlling and overriding federal law, [] defendants are, therefore, entitled to remove to the federal court." Rettig v. Arlington Heights Fed. Sav. & Loan Ass'n, supra, 405 F. Supp. at 823) (HOLA and regulation issued pursuant thereto exclusively control action against federal savings institutions involving alleged diversion of insurance commissions and fees).

8. In addition, Plaintiffs' claims involve alleged violation of the Fair Debt Collection Practices Act. 15 United States Code section 1692k(d) allows an action to be brought in any United States District Court.

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Based upon the foregoing, the instant action presents a substantial federal question and is removable pursuant to 28 U.S.C. sections 1331 and 1441(b).

9. Venue properly lies in the United States District Court for the Central District of California under 28 United States Code section 1441(a), because this District embraces the jurisdiction where this action is pending.

10. By filing this Notice of Removal, First Federal does not waive any defenses that may be available to it.

WHEREFORE, First Federal respectfully gives this Notice of Removal of the action now pending in the Superior Court of the State of California for the County of San Diego. First Federal respectfully requests that this Court accept jurisdiction of this action and, henceforth, that this action be placed on the docket of this Court for further proceedings, as if this action had initially been instituted with this Court.

EPPORT, RICHMAN & ROBBINS, LLP

By: ______________________
NAMI R. KANG
Attorneys for Defendant
FIRST FEDERAL BANK OF CALIFORNIA

EXHIBIT A

Served 6-5-08! Received by Mynor in Mail Room

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
WORLD WIDE CREDIT CORPORATION, a corporation; FIRST FEDERAL BANK OF CALIFORNIA, a National Bank; SAM SMARGON, an individual; RON FEINBERG, an individual; and Does 1 through 20 inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of San Diego-Central
330 West Broadway
San Diego, California 92101

CASE NUMBER:
(Número del Caso):
37-2008-00084613-CU-FR-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Law Offices of Eric F. Fagan, 2300 Boswell Rd. Suite 211, Chula Vista, CA 91914 Phone: 619-656-6656; Fax: 775-898-5471 Octavio Cardona-Loya II, SBN 255309

DATE: *(Fecha)* MAY 28 2008 Clerk, by *(Secretario)* B. Orihuela, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☒ on behalf of *(specify):* First Federal Bank of California, A National Bank
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☒ other *(specify):* Unknown Entity
4. ☐ by personal delivery on *(date):*

Page 1 of 1

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. January 1, 2004]

SUMMONS

Code of Civil Procedure §§ 412.20, 465

American LegalNet, Inc. www.USCourtForms.com

EXHIBIT B

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Attorney for Plaintiffs DANIEL and ANNIE MONTANO

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY, CENTRAL DIVISION

DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual, Plaintiffs, v. WORLD WIDE CREDIT CORPORATION, a corporation; FIRST FEDERAL BANK OF CALIFORNIA, a National Bank; SAM SMARGON, an individual; RON FEINBERG, an individual; and DOES 1 through 20 inclusive, Defendants.	Civil Case No.: 37-2008-00084613-CU-FR-CTL **COMPLAINT FOR DAMAGES:** **1) Breach of Fiduciary Duty;** **2) Constructive Fraud** **3) Fraud** **4) Breach of Covenant of Good Faith and Fair Dealing** **5) Unfair and Deceptive Acts and Practices**

I. INTRODUCTION

1. "Home ownership is the foundation of the American Dream. Dangerous mortgages have put millions of families in jeopardy of losing their homes." **CNN Money**, September 26, 2007.

2. "Finding ways to avoid preventable foreclosures is a legitimate and important concern of public policy. High rates of delinquency and foreclosure can have substantial spillover effects on the housing market, the financial markets and the broader economy. Therefore, doing what we can to avoid preventable foreclosures is not just in the interest of the lenders and borrowers. It's in everybody's best interest. " **Ben Bernanke**, Federal Reserve Chairman, May 9, 2008.

3. In recent years, mortgages with hidden interest rates and explosive payments have meant quick profits for brokers and lenders. Many families find their payments increasing substantially which puts them at severe risk of losing their homes. Because home values have slumped, most are unable to refinance. Unless they have relatives to move in with, these same families face difficulty renting; large numbers will end up living on the streets or in their cars.

4. "Predatory loans are characterized by . . . unnecessary provisions that do not benefit the borrower, . . . large prepayment penalties, and underwriting that ignores a borrower's repayment ability.

5. "Predatory lenders look for people who . . . are not adept in financial matters and lack the financial sophistication to scrutinize loans." **James H. Carr**, Senior Vice President, Fannie Mae Foundation, *Predatory Lending: An Overview 2001.*

6. "Most of these homeowners could avoid foreclosure if present loan holders would modify the existing loans by lowering the interest rate and making it fixed, capitalizing the arrearages, and forgiving a portion of the loan. The result would benefit lenders, homeowners, and their communities." **CNN Money**, id.

7. On behalf of President Bush, Secretary Paulson has encouraged lenders to voluntarily freeze interest rates on adjustable-rate mortgages. Mark Zandi, chief economist for Moody's commented, "There is no stick in the plan. There is a significant number of investors who would rather see homeowners default and go into foreclosure." **San Diego Union Tribune**, December 24, 2007.

8. By and large, loan holders pay only lip service to the Bush-Paulson voluntary

plan. While most of them offer loan modification assistance, the terms and conditions they would impose on homeowners is of little or no help. The majority of loan holders rush to foreclosure, often incurring immediate losses of hundreds of thousands of dollars. "Fewer than 1% of homeowners have experienced any help from the Bush-Paulson plan." **San Diego Union Tribune**, id.

9. Plaintiffs DANIEL and ANNIE Montano have been ensnared in a predatory loan of the kind mentioned above. The impending foreclosure was avoidable, yet defendants denied him the assistance envisioned by Mr. Bernanke.

II. VENUE

10. Venue in this District is proper in that the Plaintiffs reside here, Defendants transact business here, and the conduct complained of occurred here.

III. PARTIES

11. Plaintiffs are, and at all times relevant, were individuals residing at 858 Banock Street, Spring Valley, CA 91977 (the "Plaintiff's Home").

12. Defendant **WORLD WIDE CREDIT CORPORATION** is and at all times relevant was a corporation doing business in the County of San Diego, State of California, and operating from an address at 9089 Clairmont Mesa Blvd. #206, San Diego, CA 92123.

13. Defendant **FIRST FEDERAL BANK OF CALIFORNIA** is and at all times relevant was a national bank doing business in the County of San Diego, State of California, and operating from an address at PO BOX 80025 City of Industry, CA 91716-8025.

14. Defendant **RON FEINBERG** is and at all times was the real estate broker of record for World Wide and responsible for the acts of World Wide's employees, including Sam Smargon.

15. Defendant **SAM SMARGON** is and at all times was an employee of World Wide and held a California real estate license.

16. The true names and capacities, whether individual, corporate (including officers

and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs are informed and believe, and allege that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal, beneficiary, agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiffs. Plaintiffs request that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in all subsequent proceedings, and that this action may proceed against them under their true names.

IV. FACTUAL ALLEGATIONS

Obtaining the Loan

17. Plaintiff DANIEL Montano is a material repair technician by trade. Plaintiff ANNIE Montano is a preschool teacher. Plaintiffs live with their two young children, ages one and four. Neither Plaintiff is versed in other than basic financial matters.

18. Before Plaintiffs' encounter with WORLD WIDE, neither Plaintiff had ever been obligated on a home loan with variable interest rate terms.

19. On or about July 2, 2005, Plaintiffs contacted World Wide and spoke with SMARGON.

20. SMARGON urged Plaintiffs to accept the terms of what proved to be a variable interest rate loan.

21. SMARGON falsely represented to Plaintiffs that Plaintiffs would be able to refinance after five years to pay the Loan off.

22. Because of the decline in home prices and the existence of a prepayment penalty, Plaintiffs were unable to refinance the Loan once the payment recast to full amortization.

23. SMARGON failed to disclose to the Plaintiffs the fact that the interest rate on Plaintiffs' loan was not fixed for five years.

24. The interest rate on Plaintiffs' loan increased within two months.

25. SMARGON failed to disclose to the Plaintiffs the fact that each month the principal balance on Plaintiffs' loan would increase.

26. Plaintiffs were unaware that their loan balance was increasing until after they began receiving statements from FIRST FEDERAL.

27. SMARGON failed to disclose that when the loan balance reached 110% of the original amount that the monthly payment would increase to one that fully amortized the loan.

28. Plaintiffs became aware of the 100% feature of their loan when the monthly payment increased significantly.

29. Plaintiffs allege on information and belief that SMARGON falsified Plaintiffs' income for purposes of qualifying Plaintiffs for the loan.

30. SMARGON did not verify Plaintiffs' income.

31. SMARGON did not make a determination whether Plaintiffs would be able to make the payments as specified in the loan.

32. Plaintiffs' net income would not have sufficed to cover amortizing loan payments at the highest rate of interest.

33. At the loan closing, SMARGON and an assistant presented numerous documents to Plaintiffs, many for their signature.

34. SMARGON did not explain the documents or afford Plaintiffs a real chance to read over the documents.

The Increases in Plaintiff's Payment and Interest Rate

35. On or about August 23, 2007 FIRST FEDERAL notified Plaintiffs that their loan payment would increase from $1,015.78 to $1,065.78 on October 1, 2007.

36. On or about November 1, 2007, FIRST FEDERAL notified Plaintiffs that their loan would further increase to a fully amortized payment of $3,057.05 on December 1, 2007.

37. On or about November 16, 2007, after making the first fully amortized payment on the loan, Plaintiffs had depleted their liquid assets and were unable to continue to make

payments on the Loan.

Plaintiff's Efforts to Obtain a Loan Modification

38. Plaintiffs subsequently attempted to refinance the Loan through FIRST FEDERAL on several occasions.

39. Erik Kaplan, an employee of FIRST FEDERAL, told Plaintiffs the "value of the home was not enough to cover both loans," or words to that effect.

40. FIRST FEDERAL had represented that it would help homeowners having financial difficulties by modifying loans.

41. To this end, FIRST FEDERAL established and staffed a Loan Modification department.

42. On or about December 30, 2007, a FIRST FEDERAL employee Jerry Xech contacted Plaintiffs.

43. Mr. Xech asked Plaintiffs to complete a modification package and return it to FIRST FEDERAL; he stated that FIRST FEDERAL would help to work out a modification of the Loan that would be affordable to Plaintiffs.

44. On or about January 2, 2008, Plaintiffs received a "Financial Hardship" package to return to FIRST FEDERAL.

45. Accordingly, Plaintiffs submitted to FIRST FEDERAL the documentation and explanation required by FIRST FEDERAL on or about January 25, 2008.

46. On or about February 5, 2008, FIRST FEDERAL employee Candace declined Plaintiffs' application for a modification of the loan, stating that Plaintiffs had too much debt.

47. On or about April 18, 2008, Plaintiffs' attorney made a written request of FIRST FEDERAL for a modification of the Loan and submitted appropriate documentation

48. On or about April 24, 2008 a Legal Assistant Imelda in the office of Plaintiffs' attorney checked with FIRST FEDERAL to ascertain the status of the request for modification; FIRST FEDERAL had no update.

49. On or about April 25, 2008 FIRST FEDERAL caused a Notice of Default to be

recorded, thus initiating a Trustee's sale of Plaintiffs' home.

50. On or about May 1, 2008, Imelda spoke with an employee of FIRST FEDERAL, Tony, who said that Plaintiffs' monthly credit card debt would have to be reduced to no more than $100 a month in payments before FIRST FEDERAL could Plaintiff would qualify for a loan modification.

51. To that end, Plaintiffs arranged to declare a Chapter 7 bankruptcy which would reduce their monthly credit card payments to zero. Imelda conveyed this information to FIRST FEDERAL and resubmitted financial information adjusted accordingly.

52. On May 6, 2008 FIRST FEDERAL wrote to Plaintiffs stating, "Dear DANIEL Banock [sic], First Federal Bank of California is unable to offer a modification that will effectively reduce your monthly payment to an affordable amount."

53. On or about May 16, 2008, Plaintiffs spoke with FIRST FEDERAL employee Tony, who stated that FIRST FEDERAL would be willing to modify the loan if Plaintiffs could "come up with some money."

54. Tony asked how much money DANIEL could come up with in order for First Federal to modify the Loan.

55. When DANIEL stated that he had no such money, Tony refused to proceed with Plaintiffs' modification request; he stated that he would close the modification file and send the matter to the foreclosure department.

56. On or about May 17, 2008, Imelda spoke to Kit, a FIRST FEDERAL employee, who stated that Larry Beard, an attorney, would contact Plaintiffs' attorney the following day at 3:00 PM.

57. Larry Beard never called Plaintiffs' attorney.

58. Plaintiff DANIEL Montano is a Type I diabetic; he must check his blood sugar and take insulin shots four times a day. The stress that he has suffered has substantially increased his sugar levels as a result of Defendants' actions described above.

59. Plaintiff DANIEL cannot control his sugar level as well as before because of stress and lack of sleep related to Defendants' actions.

60. The stress he has undergone has affected his work, behavior, and relation with his family.

61. As a result of the acts of the defendants described above, Plaintiffs both suffer from severe depression and lack of sleep.

V. FIRST CAUSE OF ACTION

(Breach of Fiduciary Duty Against all Defendants)

62. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

63. Because of the complexity of the loan transaction, and Plaintiffs' lack of sophistication in financial matters, the Defendants owed to Plaintiffs a fiduciary duty to make the fullest disclosure of all material facts that might affect Plaintiffs' interest in entering into the loan transaction described above.

64. The Defendants breached their fiduciary duties by the misrepresentations and failures to disclose as described above.

65. The Defendants so acted in order to gain a commission to themselves, which in fact occurred.

66. Defendants' breaches of their fiduciary duty have damaged Plaintiffs in an amount to be determined at time of trial.

VI. SECOND CAUSE OF ACTION

(Constructive Fraud Against all Defendants)

67. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

68. Defendants breached their fiduciary duty to Plaintiffs as described above.

69. Plaintiffs relied on Defendants to make full and accurate disclosure of all the facts of the terms of the Loan.

70. As a result of Defendants' breaches, Plaintiffs have been damaged in an amount

to be determined at trial.

VII. THIRD CAUSE OF ACTION

(Fraud Against all Defendants)

71. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

72. The Defendants made misrepresentations and failures to disclose as described above with the intent to induce Plaintiffs to obligate themselves on the Loan in reliance on the integrity of the Defendants.

73. Plaintiffs were ignorant of the facts which Defendants misrepresented and failed to disclose.

74. Plaintiffs would not have accepted the Loan, as they did, had they known the true facts about its terms.

75. As a proximate result of Defendants' fraud, Plaintiffs have suffered damage in an amount to be determined at trial.

76. The acts of the defendants constituted despicable conduct that subjected Plaintiffs to severe emotional distress and hardship in a conscious disregard of Plaintiffs' rights, so as to justify an award of exemplary damages.

VIII. FOURTH CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing Against FIRST FEDERAL AND Does 1 through 20)

77. By accepting the Defendants' offer to modify Plaintiffs' Loan, Defendants and Plaintiffs impliedly covenanted to act in good faith and to deal fairly with each other.

78. The Defendants breached this covenant by the acts stated above.

79. Plaintiffs have suffered damage as a result of Defendants' breach in an amount to be determined at time of trial.

80. Plaintiff is entitled to damages as a result of Defendants' wrongful conduct as

alleged above.

IX. FIFTH CAUSE OF ACTION

(Unfair and Deceptive Acts and Practices Against all Defendants)

81. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

82. The acts above constitute unfair and deceptive acts as delineated by CA Business and Professions Code §17200 et seq.

83. In the event that Defendants conduct a trustee's sale of Plaintiff's property, it will be because of the acts described above; Plaintiff will seek cancellation of the foreclosure sale and restitution of his home.

X. REQUEST FOR RELIEF

Plaintiffs respectfully request that judgment be entered against all defendants and each of them for the following:

1. For exemplary and punitive damages;
2. For actual damages; and
3. For costs of suit; and
4. For such other and further relief as the Court may deem just and proper.

Dated: May 27, 2008

Octavio Cardona-Loya II
Attorney for Plaintiffs

EXHIBIT C

FILED
CIVIL BUSINESS OFFICE 18
CENTRAL DIVISION

2008 JUN 13 P 12:55

CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

Octavio Cardona-Loya II, SBN 255309
Law Offices of Eric F. Fagan
2300 Boswell Rd. Suite 211
Chula Vista, CA 91914
Octavio@efaganlaw.com
Phone: 619-656-6656; Fax: 775-898-5471
Attorney for Plaintiffs DANIEL and ANNIE MONTANO

SUPERIOR COURT OF CALIFORNIA
SAN DIEGO COUNTY, CENTRAL DIVISION

DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual, Plaintiffs, v. WORLD WIDE CREDIT CORPORATION, a corporation; FIRST FEDERAL BANK OF CALIFORNIA, a National Bank; SAM SMARGON, an individual; RON FEINBERG, an individual; and DOES 1 through 20 inclusive, Defendants.	Civil Case No.: 37-2008-00084613-CU-FR-CTL **First Amended Complaint For Damages:** **1) Violation Of The Rosenthal Act,** **2) Breach Of Fiduciary Duty and Conspiracy to Breach Fiduciary Duties,** **3) Fraud and Conspiracy to Defraud,** **4) Constructive Fraud,** **5) Breach of Covenant of Good Faith and Fair Dealing,** **6) Unfair and Deceptive Acts and Practices, and** **7) Negligent Supervision.**

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer against Defendants for violations of the California Rosenthal Act, Civil Code §1788 *et seq*. The Rosenthal Act was enacted to "prohibit debt collectors from engaging in unfair or deceptive

acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts…" (Civ. Code §1788.1.)

2. "Home ownership is the foundation of the American Dream. Dangerous mortgages have put millions of families in jeopardy of losing their homes." **CNN Money**, September 26, 2007.

3. "Finding ways to avoid preventable foreclosures is a legitimate and important concern of public policy. High rates of delinquency and foreclosure can have substantial spillover effects on the housing market, the financial markets and the broader economy. Therefore, doing what we can to avoid preventable foreclosures is not just in the interest of the lenders and borrowers. It's in everybody's best interest. " **Ben Bernanke**, Federal Reserve Chairman, May 9, 2008.

4. In recent years, mortgages with hidden interest rates and explosive payments have meant quick profits for brokers and lenders. Many families find their payments increasing substantially which puts them at severe risk of losing their homes. Because home values have slumped, most are unable to refinance. Unless they have relatives to move in with, these same families face difficulty renting; large numbers will end up living on the streets or in their cars.

5. "Predatory loans are characterized by . . . unnecessary provisions that do not benefit the borrower, . . . large prepayment penalties, and underwriting that ignores a borrower's repayment ability.

6. "Predatory lenders look for people who . . . are not adept in financial matters and lack the financial sophistication to scrutinize loans." **James H. Carr**, Senior Vice President, Fannie Mae Foundation, *Predatory Lending: An Overview 2001.*

7. "Most of these homeowners could avoid foreclosure if present loan holders would modify the existing loans by lowering the interest rate and making it fixed, capitalizing the arrearages, and forgiving a portion of the loan. The result would benefit lenders, homeowners, and their communities." **CNN Money**, id.

8. On behalf of President Bush, Secretary Paulson has encouraged lenders to voluntarily freeze interest rates on adjustable-rate mortgages. Mark Zandi, chief economist for Moody's commented, "There is no stick in the plan. There is a significant number of investors who would rather see homeowners default and go into foreclosure." **San Diego Union Tribune**, December 24, 2007.

9. By and large, loan holders pay only lip service to the Bush-Paulson voluntary plan. While most of them offer loan modification assistance, the terms and conditions they would impose on homeowners is of little or no help. The majority of loan holders rush to foreclosure, often incurring immediate losses of hundreds of thousands of dollars. "Fewer than 1% of homeowners have experienced any help from the Bush-Paulson plan." **San Diego Union Tribune**, id.

10.Plaintiffs DANIEL and ANNIE Montano have been ensnared in a predatory loan of the kind mentioned above. The impending foreclosure was avoidable, yet defendants denied him the assistance envisioned by Mr. Bernanke.

II. VENUE

11. Venue in this District is proper in that the Plaintiffs reside here, Defendants transact business here, and the conduct complained of occurred here.

III. PARTIES

12. Plaintiffs are, and at all times relevant, were individuals residing at 858 Banock Street, Spring Valley, CA 91977 (the "Plaintiff's Home").

13. Defendant **WORLD WIDE CREDIT CORPORATION** is and at all times relevant was a corporation doing business in the County of San Diego, State of California, and operating from an address at 9089 Clairmont Mesa Blvd. #206, San Diego, CA 92123.

14. Defendant **FIRST FEDERAL BANK OF CALIFORNIA** is and at all times relevant was a national bank doing business of collecting debts in the County of San Diego, State of California, and operating from an address at PO BOX 80025 City of Industry, CA

91716-8025.

15. Defendant **RON FEINBERG** is and at all times was the real estate broker of record for World Wide and responsible for the acts of World Wide's employees, including, but not limited to, Sam Smargon.

16. Defendant **SAM SMARGON** is and at all times was an employee of World Wide and held a California real estate license.

17. The true names and capacities, whether individual, corporate (including officers and directors thereof), associate or otherwise of Defendants sued herein as DOES 1 through 20, inclusive, are unknown to Plaintiffs, who therefore sue these Defendants by such fictitious names. Plaintiffs are informed and believe, and allege that each Defendant designated as a DOE is involved in or is in some manner responsible as a principal, beneficiary, agent, dual agent, co-conspirator, joint venturer, alter ego, third party beneficiary, or otherwise, for the agreements, transactions, events and/or acts hereinafter described, and thereby proximately caused injuries and damages to Plaintiffs. Plaintiffs request that when the true names and capacities of these DOE Defendants are ascertained, they may be inserted in all subsequent proceedings, and that this action may proceed against them under their true names.

18. Plaintiffs are "debtors" as defined by the Rosenthal Act, California Civil Code 1788.2(h).

19. The purported debt which Defendants attempted to collect from Plaintiffs was a "consumer debt" as defined by the Rosenthal Act, California Civil Code §1788.2(f).

IV. FACTUAL ALLEGATIONS

Obtaining the Loan

20. Plaintiff DANIEL Montano is a material repair technician by trade. Plaintiff ANNIE Montano is a preschool teacher. Plaintiffs live with their two young children, ages one and four. Neither Plaintiff is versed in other than basic financial matters.

21. Before Plaintiffs' encounter with WORLD WIDE, neither Plaintiff had ever

been obligated on a home loan with variable interest rate terms.

22. On or about July 2, 2005, Plaintiffs contacted World Wide and spoke with SMARGON.

23. SMARGON urged Plaintiffs to accept the terms of what proved to be a variable interest rate loan.

24. SMARGON failed to disclose to the Plaintiffs the fact that the interest rate on Plaintiffs' loan was not fixed for five years.

25. The interest rate on Plaintiffs' loan increased within two months.

26. The provisions regarding interest rate, late charges and balloon payment were highly unfavorable to the borrower and yet the broker made no attempt to draw Plaintiffs' attention to these matters.

27. SMARGON failed to disclose to the Plaintiffs the fact that each month the principal balance on Plaintiffs' loan would increase.

28. Plaintiffs were unaware that their loan balance was increasing until after they began receiving statements from FIRST FEDERAL.

29. SMARGON failed to disclose that when the loan balance reached 110% of the original amount that the monthly payment would increase to one that fully amortized the loan.

30. Plaintiffs became aware of the 110% aspect of their loan when the monthly payment increased significantly.

31. Plaintiffs allege on information and belief that SMARGON falsified Plaintiffs' income for purposes of qualifying Plaintiffs for the loan.

32. SMARGON did not verify Plaintiffs' income.

33. SMARGON did not make a determination whether Plaintiffs would be able to make the payments as specified in the loan.

34. Plaintiffs' net income would not have sufficed to cover amortizing loan payments at the highest rate of interest.

35. At the loan closing, SMARGON and an assistant presented numerous documents to Plaintiffs, many for their signature.

36. SMARGON did not explain the documents or afford Plaintiffs a real chance to read over the documents.

37. FEINBERG, as SMARGON's supervisor and broker of record, knew or should have know of SMARGON's misrepresentations and failures to disclose.

The Increases in Plaintiffs' Payment and Interest Rate

38. On or about August 23, 2007 FIRST FEDERAL notified Plaintiffs that their loan payment would increase from $1,015.78 to $1,065.78 on October 1, 2007.

39. On or about November 1, 2007, FIRST FEDERAL notified Plaintiffs that their loan would further increase to a fully amortized payment of $3,057.05 on December 1, 2007.

40. On or about November 16, 2007, after making the first fully amortized payment on the loan, Plaintiffs had depleted their liquid assets and were unable to continue to make payments on the Loan.

Plaintiffs' Efforts to Obtain a Loan Modification

41. Plaintiffs subsequently attempted to refinance the Loan through FIRST FEDERAL on several occasions.

42. Erik Kaplan, an employee of FIRST FEDERAL, told Plaintiffs the "value of the home was not enough to cover both loans," or words to that effect.

43. FIRST FEDERAL had represented that it would help homeowners having financial difficulties by modifying loans.

44. To this end, FIRST FEDERAL established and staffed a Loan Modification department.

45. On or about December 30, 2007, a FIRST FEDERAL employee Jerry Xech contacted Plaintiffs.

46. Mr. Xech asked Plaintiffs to complete a modification package and return it to FIRST FEDERAL; he stated that FIRST FEDERAL would help to work out a modification of the Loan that would be affordable to Plaintiffs.

47. On or about January 2, 2008, Plaintiffs received a "Financial Hardship" package to return to FIRST FEDERAL.

48. Accordingly, Plaintiffs submitted to FIRST FEDERAL the documentation and explanation required by FIRST FEDERAL on or about January 25, 2008.

49. On or about February 5, 2008, FIRST FEDERAL employee Candace declined Plaintiffs' application for a modification of the loan, stating that Plaintiffs had too much debt.

50. On or about April 18, 2008, Plaintiffs' attorney made a written request of FIRST FEDERAL for a modification of the Loan and submitted appropriate documentation

51. On or about April 24, 2008, Legal Assistant Imelda in the office of Plaintiffs' attorney checked with FIRST FEDERAL to ascertain the status of the request for modification; the employee of FIRST FEDERAL with whom she spoke had no update.

52. On or about April 25, 2008 FIRST FEDERAL caused a Notice of Default to be recorded, thus initiating a Trustee's sale of Plaintiffs' home.

53. On or about May 1, 2008, Imelda spoke with an employee of FIRST FEDERAL, Tony, who said that Plaintiffs' monthly credit card debt would have to be reduced to no more than $100 a month in payments before FIRST FEDERAL could Plaintiff would qualify for a loan modification.

54. To that end, Plaintiffs arranged to declare a Chapter 7 bankruptcy which would reduce their monthly credit card payments to zero. Imelda conveyed this information to FIRST FEDERAL and resubmitted financial information adjusted accordingly.

55. On May 6, 2008 FIRST FEDERAL wrote directly to Plaintiffs stating, "Dear DANIEL Banock [sic], First Federal Bank of California is unable to offer a modification that will effectively reduce your monthly payment to an affordable amount."

56. At this time, FIRST FEDERAL knew an attorney was representing Plaintiffs.

57. On or about May 16, 2008, Plaintiffs spoke with FIRST FEDERAL employee Tony, who stated that FIRST FEDERAL would be willing to modify the loan if Plaintiffs could "come up with some money."

58. Tony asked how much money DANIEL could come up with in order for First Federal to modify the Loan.

59. When DANIEL stated that he had no such money, Tony refused to proceed with Plaintiffs' modification request; he stated that he would close the modification file and send the matter to the foreclosure department.

60. On or about May 17, 2008, Imelda spoke to Kit, a FIRST FEDERAL employee, who stated that Larry Beard, an attorney, would contact Plaintiffs' attorney the following day at 3:00 PM.

61. Larry Beard never called Plaintiffs' attorney.

62. On June 2, 2008, FIRST FEDERAL again contacted Plaintiffs directly by letter, even though FIRST FEDERAL knew Plaintiffs had retained legal counsel.

63. Plaintiff DANIEL-Montano is a Type I diabetic; he must check his blood sugar and take insulin shots four times a day. The stress that he has suffered has substantially increased his sugar levels as a result of Defendants' actions described above.

64. Plaintiff DANIEL cannot control his sugar level as well as before because of stress and lack of sleep related to Defendants' actions.

65. The stress he has undergone has affected his work, behavior, and relationship with his family.

66. As a result of the acts of the defendants described above, Plaintiffs both suffer from severe depression and lack of sleep.

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V. FIRST CAUSE OF ACTION

(Violation of the Rosenthal Act Against FIRST FEDERAL)

67. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

68. Defendant FIRST FEDERAL violated the Rosenthal Act. FIRST FEDERAL's violations include, but are not limited to, the following:

(a) The Defendant violated 15 U.S.C. § 1692b(6) by communicating with a person other than the Plaintiff's attorney after the debt collector knew the Plaintiff was represented by an attorney.

(b) The Defendant violated California Civil Code §1788.17 by engaging in conduct the natural consequence of which is to harass, oppress, and abuse persons in connection with the collection of the alleged debt a violation of 15 U.S.C. § 1692d;

(c) The Defendant violated California Civil Code §1788.17 by using false, deceptive, or misleading representations or means in connection with the collection of a debt, a violation of 15 U.S.C. § 1692e;

(d) The Defendant violated California Civil Code §1788.17 by using deceptive means to collect or attempt to collect a debt from the Plaintiffs, a violation of 15 U.S.C. § 1692e(10);

(e) The Defendant violated California Civil Code §1788.17 by using unfair or unconscionable means to collect or attempt to collect a debt, a violation of 15 U.S.C. § 1692(f);

(f) The Defendant violated California Civil Code §1788.17 by failing to send Plaintiffs a validation notice within five days of the initial communication, a violation of 15 U.S.C. § 1692g(a).

(g) The Defendant violated California Civil Code §1812.700 by failing to include the notice required by this section.

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VI. SECOND CAUSE OF ACTION

(Breach of Fiduciary Duty and Conspiracy to Breach Fiduciary Duties Against all Defendants)

69. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

70. Because of the complexity of the loan transaction, and Plaintiffs' lack of sophistication in financial matters, the Defendants owed to Plaintiffs a fiduciary duty to make the fullest disclosure of all material facts that might affect Plaintiffs' interest in entering into the loan transaction described above.

71. The Defendants breached their fiduciary duties by the misrepresentations and failures to disclose as described above.

72. The Defendants so acted in order to gain a commission to themselves, which in fact occurred.

73. The DOE defendants knew or should have known of Defendants' breaches of duty.

74. Defendants conspired and agreed to commit the above mentioned breaches of fiduciary duties.

75. Defendants' breaches of their fiduciary duties have damaged Plaintiffs in an amount to be determined at time of trial.

VII. THIRD CAUSE OF ACTION

(Fraud and Conspiracy to Defraud Against all Defendants)

76. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

77. The Defendants made misrepresentations and failures to disclose as described above with the intent to induce Plaintiffs to obligate themselves on the Loan in reliance on the integrity of the Defendants.

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78. Plaintiffs are unsophisticated customers whose reliance upon the misrepresentations of Defendants were reasonable and consistent with the Congressional intent and purpose of Civil Code Section 1572; enacted in 1872 and designed to assist and protect consumers similarly situated as Plaintiffs in this action.

79. As unsophisticated customers, Plaintiffs could not have discovered the true nature of the material facts on their own.

80. The accuracy of Defendants' representations is important in enabling consumers such as Plaintiffs to compare market lenders in order to make informed decisions regarding lending transactions such as the Loan.

81. Plaintiffs were ignorant of the facts which Defendants misrepresented and failed to disclose.

82. Plaintiffs' reliance on Defendants' representations was a substantial factor in causing their harm.

83. Had the terms of the Loan been accurately represented and disclosed by Defendants, Plaintiffs would not have accepted the Loan nor be harmed.

84. Defendants conspired and agreed to commit the above mentioned fraud.

85. As a proximate result of Defendants' fraud, Plaintiffs have suffered damage in an amount to be determined at trial.

86. The conduct of Defendants as mentioned above was fraudulent within the meaning of California Civil Code Section 3294(c)(3), and by virtue thereof Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish and make an example of Defendants.

VIII. FOURTH CAUSE OF ACTION

(Constructive Fraud Against all Defendants)

87. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

88. Defendants breached their fiduciary duty to Plaintiffs as described above.

89. Plaintiffs relied on Defendants to make full and accurate disclosure of all the facts of the terms of the Loan.

90. As a result of Defendants' breaches, Plaintiffs have been damaged in an amount to be determined at trial.

IX. FIFTH CAUSE OF ACTION

(Breach of Covenant of Good Faith and Fair Dealing Against FIRST FEDERAL and Does 1 through 20)

91. By accepting the Defendants' offer to modify Plaintiffs' Loan, Defendants and Plaintiffs impliedly covenanted to act in good faith and to deal fairly with each other.

92. The Defendants breached this covenant by the acts stated above.

93. Plaintiffs have suffered damage as a result of Defendants' breach in an amount to be determined at time of trial.

X.SIXTH CAUSE OF ACTION

(Unfair and Deceptive Acts and Practices Against all Defendants)

94. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

95. Defendants' violations and tortious conduct as described above are unlawful, unfair or fraudulent business practices or acts under the Unfair Competition Law of Business and Professions Code §17200, *et seq*.

96. In the event that Defendants conduct a trustee's sale of Plaintiffs' property, it will be because of the acts described above; Plaintiffs will seek cancellation of the foreclosure sale and restitution of their home, including lost monies, attorney fees and any civil penalties and other relief, including injunctive, that the court deems appropriate.

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XI. SEVENTH CAUSE OF ACTION

(Negligent Supervision Against FEINBERG)

97. Plaintiffs repeat, reallege, and incorporate by reference all the foregoing paragraphs.

98. Defendant FEINBERG, as designated officer of WORLD WIDE, negligently failed to exercise reasonable supervision over the licensed activities conducted by WORLD WIDE, including but not limited to, the supervision and training of salespersons, brokers, and other individuals hired for the purpose of selling and/or brokering.

99. Plaintiffs have suffered damage as a result of FEINBERG's negligent supervision in an amount to be determined at time of trial.

XII. REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that judgment be entered against all Defendants and each of them for the following:

1. For exemplary and punitive damages;
2. Actual damages;
3. Statutory damages pursuant to California Civil Code §1788.30(a);
4. Costs and reasonable attorney's fees pursuant to California Civil Code §1788.30(b) and §1788.30(c);
5. Restitution of the property at 858 Banock Street, Spring Valley, CA 91977; and

(e) For such other and further relief as the Court may deem just and proper.

Dated: 6/12/2008.

Octavio Cardona-Loya II
Attorney for Plaintiffs

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 1875 Century Park East, Suite 800, Los Angeles, California 90067-2512.

On July 2, 2008, I served true copies of the following document(s) described as **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(B) (FEDERAL QUESTION)** on the interested parties in this action as follows:

Octavio Cardona-Loya, II Law Offices of Eric F. Fagan 2300 Boswell Road, Suite 211 Chula Vista, California 91914	Attorneys for Plantiffs DANIEL MONTANO and ANNIE MONTANO
Gary Kincannon Barry Gardner & Kincannon 5000 Birch Street, #420 Newport Beach, California 92660	Attorneys for Defendants WORLDWIDE CREDIT CORPORATION and RON FEINBERG
Matt Rifat Manning and Marder 550 West C. Street, Suite 1900 San Diego, California 92101	Attorneys for Defendants WORLDWIDE CREDIT CORPORATION and RON FEINBERG

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Epport, Richman & Robbins, LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing as set forth in this Proof of Service.

I declare that I am employed in the office of a member of the bar of this Court, at whose direction this service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 2, 2008, at Los Angeles, California.

Mae T. Sasina

Mae T. Sasina

EPPORT, RICHMAN & ROBBINS, LLP
1875 CENTURY PARK EAST, SUITE 800
LOS ANGELES, CALIFORNIA 90067-2512
TELEPHONE (310) 785-0885 • FACSIMILE (310) 785-0787

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

 # 152588 - TC

July 02, 2008
16:07:45

Civ Fil Non-Pris
USAO #.: 08CV1183
Judge..: NAPOLEON A JONES, JR
Amount.: $350.00 CK
Check#.: BC14254

Total-> $350.00

FROM: DANIEL & ANN MONTANO
VS
WORLD WIDE CREDIT CORP.

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED

I. (a) PLAINTIFFS	DEFENDANTS
DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual,	WORLD WIDE CREDIT CORPORATION, et al., (See Attachment for Additional Defendants)
(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.
(c) Attorney's (Firm Name, Address, and Telephone Number) Law Offices of Eric F. Fagan, 2300 Boswell Rd., Ste. 211, Chula Vista, California 91914 (619-656-6656)	Attorneys (If Known) '08 CV 1183 J RBB Gary Kincannon, Barry, Gardner & Kincannon, 5000 Birch St., #420, Newport Beach, California 92660 (949-851-9111)

08 JUL -2 PM 1:03 CLERK, U.S. DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA BY: DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**): Fair Debt Collection Practices Act (15 U.S.C. Section 1692), Home Owners' Loan Act (12 U.S.C. Section 1461)

Brief description of cause: Plaintiffs allege violation of the FDCPA and fraud with regard to their loan transaction.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND $ CHECK YES only if demanded in complaint: JURY DEMAND: ☐ Yes ☑ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 7/1/08 SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # 152588 AMOUNT $350 APPLYING IFP JUDGE MAG. JUDGE

TAC 7/2/08

ORIGINAL

ATTACHMENT TO CIVIL COVER SHEET

DANIEL MONTANO, an individual, and ANNIE MONTANO, an individual, PLAINTIFFS,

v.

WORLD WIDE CREDIT CORPORATION, a corporation, FIRST FEDERAL BANK OF CALIFORNIA, a National Bank; SAM SMARGON, an individual; RON FEINBERG, an individual; and DOES 1 through 20, inclusive, DEFENDANTS.

ADDITIONAL DEFENDANTS:

FIRST FEDERAL BANK OF CALIFORNIA

County of Residence: Los Angeles

Attorneys: Epport, Richman & Robbins, LLP, Suite 800, 1875 Century Park East, Los Angeles, CA 90067-2512 (310-785-0885)

SAM SMARGON

County of Residence: Unknown

Attorney: Unknown

RON FEINBERG

County of Residence: Unknown

Attorneys: Gary Kincannon, Barry, Gardner & Kincanno, 5000 Birch St., #420, Newport Beach, CA 92660 (949-851-9111) and Matt Rifat, Manning and Marder, 550 West C St., Suite 1900, San Diego, CA 92101 (619-515-0269)

ADDITIONAL ATTORNEYS FOR WORLD WIDE CREDIT CORPORATION: Matt Rifat, Manning and Marder, 550 West C St., Suite 1900, San Diego, CA 92101 (619-515-0269)